

DISABILITY IN EDUCATION RESPONSE SHEET

Please send your response by 28 April 2000 to Margaret Casey, Consultation Unit, Area 2B, Castle View House, PO Box 12, East Lane, Runcorn, Cheshire, WA7 2GJ **(England and Wales)** OR Simon Stockwell, Scotland Office, Home and Social Division, 1 Melville Crescent, Edinburgh EH3 7HW **(Scotland)**.

Introduction

1. The Further Education Development Agency (FEDA) is an independent organisation, established in April 1995 to provide services to further education which promote quality, lead curriculum design and development, and enhance effective governance and management.
2. FEDA works primarily with the post 16 further education sector and this response deals with the consultation questions related to that area. It does not address questions related specifically to the school sector.
3. FEDA welcomes the introduction of legislation for disability rights in education. This should ensure that disabled people have better access to educational opportunities. It will mean that they can participate fully in learning without fear of discrimination, in the expectation that their reasonable support needs will be met.
4. The effectiveness of the legislation will depend on the interpretation of 'reasonable' and 'justified.' The guidance and Code of Practice associated with the legislation will help with the interpretation. It will be essential to ensure that disabled people and representatives of organisations of and for disabled people are involved in the drafting of the Code of Practice.
5. The definition of disability taken from the Disability Discrimination Act is recognised as problematic. FEDA recommends that the new legislation takes the opportunity to redefine disability in the context of education. A useful starting point could be the definition of disability or 'learning difficulty' used in the 1992 Further and Higher Education Act. This definition has proved to be effective in the post school education sector.

Annex A: Rights for disabled people in education (This applies to England, Scotland and Wales)

Q1: Do you agree that it is necessary, where it is not obvious that a student is disabled, for a student to disclose his/her disability to the institution in order to benefit from the new duties (paragraph 10)?

6. Yes, FEDA agrees that it should be necessary for a disabled learner to disclose his/her disability in order to benefit from the new duties. However, we recognise the sensitivity related to disclosure and would wish to ensure that all institutions handle this sensibly. It is crucial that institutions are encouraged to create an ethos; an environment in which disabled students feel safe and confident to disclose their

disabilities. Institutions should also respect learners' wishes for confidentiality. Where a student discloses a disability later in a course, the institution will still be responsible for its duties towards the learner, although it may take a little time to put in place the necessary arrangements.

Q2: What do consultees consider would be a reasonable and realistic timetable for introducing the new duties which are set out in annexes A1 and A2 (paragraph 12)?

7. FEDA considers that the new legislation should be implemented as soon as possible. Most FE institutions have been actively seeking to remove barriers to access for disabled learners. Since the legislation will require only reasonable adjustments, there is no reason why it should not be implemented immediately. Responsible institutions will already have addressed any unreasonable or unjustified discrimination.

Annex A1: Disability Rights Task Force (DRTF) recommendations for schools

Q3: Do consultees see any difficulties in implementing the new duties on education providers in the schools sector?

No comment

Q4: Do consultees agree that the new rights of redress for pupils should mirror the proceedings of the existing SEN Tribunal with its emphasis on remedy through educational means (paragraphs 17-22)?

No comment

Annex A2: Disability Rights Task Force (DRTF) recommendations on post-16 education

Q5: Should the new duties apply to publicly funded higher and further educational institutions and Part III to the private and voluntary sectors (paragraphs 8-9)?

8. No. FEDA considers that all publicly funded learning by disabled students should be covered by the new duties. This should apply to both publicly funded educational institutions and private and voluntary sector providers.
9. The new duties will offer stronger protection to disabled learners than the DDA Part III. It is inappropriate for some learners to be afforded more limited protection simply because their learning is provided by the private or voluntary sector. For example, a learner attending a residential specialist college should have the same rights and protection as one attending an FE sector college. This is particularly important as learners with the most complex and challenging disabilities may well attend private or voluntary sector provision. These most vulnerable individuals should not be subject to

more limited rights and protection than other disabled learners.

Q6: Do you agree that LEA-secured adult education and, in Scotland, local authority community education services should be treated together with further and higher education sector institutions and covered by the new duties (paragraphs 10-11)?

10. Yes. FEDA can see no reason why any disabled learners should be treated less favourably than others (see response to Q5)

Q7: Should education providers be covered by the new duties in relation to only their own provision? Or should this be extended to any provision on their behalf (paragraph 12)?

11. FEDA considers that any provision made on behalf of an education provider should be covered by the new duties rather than Part III of the DDA. The majority of the FE institutions use contractors to deliver some services and it would be inappropriate to exclude these from the new duties.

Q8: Should education and services provided by an institution primarily for students fall within the new duties and other services remain in Part III? Is such a division workable (paragraphs 13-16)?

12. No. FEDA considers that the learner's whole educational experience should be covered coherently by the same duties. It could be very confusing to have different arrangements. This means that some services currently covered by the DDA will transfer to be covered by the new duties. There should be no division between services provided by, or on behalf of an institution. Any attempt to draw a dividing line would be inappropriate and probably unworkable. It would not make sense from the perspective of the learner.

Q9: Are there other types of reasonable adjustments that providers should have to consider (paragraphs 19-20)?

13. FEDA considers that the range of reasonable adjustments that providers might be called upon to make is virtually infinite. Consequently there are likely to be a variety of types of reasonable adjustment which a provider might be called upon to make. See Q10.

Q10: Although the list at paragraph 21 ('assessing what is a reasonable adjustment') is not complete, are there other factors that should be taken into consideration?

14. *Note: The examples given mostly apply to Higher Education. Ensure that these are balanced by examples that apply to Further Education. For each topic include a pair of examples on what is and what is not a reasonable adjustment. It will help to have a range of forms of disability and learning difficulty included.*

15. FEDA has evidence that transport to and from the place of learning is a major barrier

to access. Disabled people are unjustifiably discriminated against because they may not be able to use the forms of transport available to his/her peers. Education providers could be required to make this as a reasonable adjustment, provided that they receive a financial allocation to cover the costs involved.

16. Education providers need to make adjustments to assessment arrangements to ensure that they are equally accessible to disabled learners, and many providers do this. Sometimes there are difficulties in interpreting the arrangements that are acceptable to the awarding bodies, for example in finding equivalent alternatives.
17. The length and timescale for programmes of learning may need to be varied and or extended for disabled learners. They might need longer for individual components of the programme such as assignments, or may need longer for the programme as a whole. Some learners might need to have periods of time away from learning, for example through ill health, but they should be able to return when their health improves. Institutions should develop the flexibility to make such reasonable adjustments.
18. Institutions should be required to make reasonable adjustments to enable disabled learners to participate in organisation wide procedures. For example, FE colleges regularly collect feedback from learners on their programmes. They often use questionnaires to do this. Reasonable adjustments might be a person to read and complete the questionnaire on the learners behalf, or the opportunity to give verbal feedback.
19. Some disabled learners do not have the access to work placements enjoyed by their non disabled peers. Providers should ensure that they make reasonable adjustments by for example making available additional support on the placement, or by negotiating suitable adjustments to the placement.

Q11: Are there any other factors that should be considered in justifying less favourable treatment (paragraphs 22-25)?

20. FEDA considers that the cost of an adjustment should not be a barrier to provision where resources are available to the institution to cover the cost. This would not apply where others are responsible for funding the support, for example through the Disabled Students Allowance in Higher Education.
21. The consultation suggests that the importance of the service might be a justification for less favourable treatment. FEDA believes that the importance of the provision may only be judged by the disabled individual and how it affects him/her. A non vocational leisure course might appear to be of lesser importance to an outsider than an award bearing vocational programme. Yet for some disabled individuals the non vocational leisure programme might be an essential first step back into learning.

Q12. Should the remedies and court used for these discrimination cases be the same as for Part III and other discrimination cases in education (paragraph 26)?

22. From the perspective of the learner, what is needed is that the reasonable adjustment is made or the unjustified discrimination is removed. The new provision should be able to require this to happen. Every effort should be made to ensure that complaints about discrimination are resolved at the earliest possible stage. Institutions will need to ensure that they have effective procedures in place to do this. The courts should be seen as a final resort. FEDA agrees that the rights of redress should be the same as those for other forms of discrimination in education. It would be quite inappropriate to use the SEN tribunal system.

Q13. What conciliation arrangements would be appropriate (paragraph 27)?

23. FEDA considers that the main aim of effective conciliation arrangements should be to resolve disputes as speedily as possible so as not to further disrupt learning. A timescale should be set for both conciliation and for bringing cases to court. The conciliation arrangement set up under Part III of the DDA should be thoroughly evaluated and aspects of effective practice adopted.

Annex B: Special Educational Needs (SEN) (This applies to England and Wales only)

Q14: Do you see any practical difficulties with the proposals on parent partnership and conciliation (paragraphs 3-5)?

No comment

Q15: Do you agree that schools and LEAs (in the case of maintained schools) should have a statutory duty to notify parents that the school has concluded that their child has SEN (paragraph 7)?

No comment

Q16: Do you agree that LEAs should not be required to specify the name of a school in part 4 of a statement in cases where the parents have themselves made suitable alternative arrangements for their child's education (paragraphs 9-10)?

No comment

Q17: Do you agree that schools should be given the right to request that their LEA makes a statutory assessment and that parents should be allowed to appeal to the SEN Tribunal when the LEA have refused an assessment request from the child's school (paragraph 11)?

No comment

Q18: Do you anticipate practical difficulties with the proposals in relation to the SEN Tribunal (paragraphs 12-16)?

No comment

Q19: Do you agree that the proposals to strengthen the right to a mainstream place strike the right balance between (i) strengthening inclusion and (ii) the interests of other children (paragraphs 17-21)?

No comment

Q20: Do you have any comments to make on the Regulatory Impact Assessment (RIA)?

No comment

Please turn over

In order to help us in our analysis, please indicate:

1. Where you are replying from?

<i>England ✓</i>	Scotland	Wales
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2. Who is this response from?

Local Education Authority/Local Authority	Local Government Representative Organisation	Professional Association
SEN/Disability Organisation	Religious/Denominational and Related Bodies	Government Department / Agency
Independent Schools Organisations	School	Teacher
Social, Welfare and Related Body	Individual	Higher Education Institution
Further Education Institution	Funding Council	Voluntary Youth Organisation

Other (please specify) : Further Education Development Agency

3. Please indicate whether all or part of your response should remain confidential

<i>All my response should remain confidential</i>	<i>Part of my response should remain confidential (please specify)</i>
No	No